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FEDERAL COMMUNICATIONS COMMISSION  
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JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
The Development of Operational, Technical )  
and Spectrum Requirements for Meeting )  
Federal, State and Local Public Safety )  
Agency Communication Requirements )  
Through the Year 2010 )  
)  
Establishment of Rules and Requirements )  
for Priority Access Service )

WT Docket No. 96-86

TO: The Commission

**COMPU-DAWN'S REPLY COMMENTS ON THE  
SECOND NOTICE OF PROPOSED RULE MAKING**

Compu-DAWN, Inc. ("Compu-DAWN") submits this brief reply in response to certain comments filed on the Second Notice of Proposed Rulemaking ("Second Notice") and the Commission's recent determination that the issues raised by Compu-DAWN should be resolved in this proceeding. In both this proceeding on licensing and service rules for the 746-806 MHz band (the "Rules Proceeding") and *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157 (the "Allocation Proceeding"), Compu-DAWN has raised issues about eligibility for public safety allocations. Specifically, Compu-DAWN -- a non-governmental entity authorized to provide public safety services by several of the nation's police, fire and other emergency service agencies -- has filed comments supporting the Commission's proposal to allocate 24 MHz of spectrum for public safety uses and highlighting the additional or alternative means by which commercial entities that qualify for public safety spectrum can help public safety personnel protect life

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and property in a safe and cost effective manner.<sup>1/</sup> In its Report and Order in the Allocation Proceeding,<sup>2/</sup> the Commission decided that these eligibility questions are better resolved in the above-captioned Rules Proceeding. Compu-DAWN files these reply comments to review the issues that it raised in the Allocation Proceeding so that the Commission, in accordance with the Report & Order, can resolve these issues in the present Rules Proceeding.

At the time that the Commission issued its Notice of Proposed Rulemaking in the Allocation Proceeding,<sup>3/</sup> Congress had yet to enact the Balanced Budget Act of 1997 and its corresponding amendment to Title III of the Communications Act of 1934 (the "Act").<sup>4/</sup> In amending the Act, Congress instructed the Commission to allocate 24 MHz of spectrum for "public safety services."<sup>5/</sup> Congress defined "public safety services" as "services --

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

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<sup>1/</sup> See Compu-DAWN Comments, ET Docket 97-157 (filed September 15, 1997); Compu-DAWN Comments, WT Docket No. 96-86 (filed December 22, 1997).

<sup>2/</sup> See *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, Report and Order, FCC 97-421, ¶ 43 (released December 31, 1997) ("Report & Order").

<sup>3/</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, Notice of Proposed Rulemaking, FCC 97-245, released July 10, 1997 ("Allocation Notice").

<sup>4/</sup> See *Balanced Budget Act of 1997* (Pub. L. 105-33, approved 8/05/97) ("Budget Act").

<sup>5/</sup> "Not later than January 1, 1998, the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:

(1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General.

(2) 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to section 309(j)."

See Section 337(a) of the Communications Act, amended by Section 3004 of the Budget Act.

(B) that are provided --

(i) by State or local government entities; or

(ii) by *nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services*; and

(C) that are not made commercially available to the public by the provider.<sup>6/</sup>

Compu-DAWN fits squarely within Congress' definition of a provider of public safety services: Compu-DAWN's principal mission is to develop seamless, end-to-end public safety support software that will service the nation's police, fire and other emergency service agencies in protecting the safety of life, health and property; Compu-DAWN is authorized by various public safety agencies to provide public safety support services; and Compu-DAWN does not make its products commercially available to the public.

However, lacking the benefit of Congress' amendments at the time of drafting its Allocation Notice, the Commission failed to include qualified nongovernmental organizations in its allocation proposal.<sup>7/</sup> In light of the clear direction from Congress for the Commission to receive applications from and consider granting licenses to these nongovernmental organizations, Compu-DAWN urged the Commission to modify its proposals

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<sup>6/</sup> See *id.*, Section 337(f) (emphasis added).

<sup>7/</sup> See Allocation Notice, at ¶ 9 & ¶ 1, n.1 (referencing "public safety agencies" and the public safety radio services identified in 47 C.F.R. § 90.15 as the entities to which its public safety allocation proposals apply).

in the Allocation Notice and to include these entities as candidates for the allocated public safety spectrum.<sup>8/</sup>

In response to Compu-DAWN's comments, the National Public Safety Telecommunications Council ("NPSTC") and the Association of Public-Safety Communications Officials-International, Inc. ("APCO") argued for a much more restrictive definition of "public safety services" than that provided by Congress in section 337(a). Seeking to exclude Compu-DAWN as a candidate for public safety spectrum, NPSTC and APCO contended that Congress *meant to* restrict eligibility for spectrum to a smaller group. As Compu-DAWN demonstrated in the Allocation Proceeding, and reiterates for the Commission below, there is no basis for NPSTC and APCO's position in the language of the statute or in its legislative history.

NPSTC and APCO first assert that it "*appears*" Congress meant to exclude for-profit entities.<sup>9/</sup> But this position, on its face, is not supportable. Certainly Congress would have expressly restricted its definition of public safety services if it intended to limit

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<sup>8/</sup> See Compu-DAWN Comments, ET Docket No. 97-157, filed September 15, 1997. In its comments in the Rules Proceeding, Compu-DAWN similarly highlighted Congress' explicit intent to include Compu-DAWN, a qualified nongovernmental organization, as a candidate for public safety spectrum. Compu-DAWN also urged the Commission to recognize the ways in which commercial entities eligible to receive public safety spectrum can help build seamless nationwide interoperability communications and promote desired partnerships between commercial and public safety entities. See Compu-DAWN Comments, WT Docket No. 96-86, filed December 22, 1997.

<sup>9/</sup> NPSTC Reply Comments, ET Docket No. 97-157, at 6; APCO Reply Comments, ET Docket No. 97-157, at 6.

public safety spectrum to nongovernmental non-profit entities. Indeed, Congress explicitly restricted the reach of other public safety provisions in the Budget Act.<sup>10/</sup>

The Commission similarly should reject NPSTC and APCO's contention that an agreement with a public safety agency to assist in public safety operations was *not meant to constitute* an authorization by the agency as outlined in the statute. Neither NPSTC nor APCO cite support for their novel definition of "authorized" and neither explain what else Congress possibly could have meant by the phrase "authorized by a governmental entity . . ." if contracts or agreements with such entities are not included.<sup>11/</sup> Absent clear direction to the contrary from Congress, the Commission should interpret the term "authorized" in accordance with its ordinary and standard meaning.<sup>12/</sup>

In addition to the plain language of the statute that requires the Commission to receive applications from and consider granting licenses to nongovernmental organizations such as Compu-DAWN, the Commission should embrace such an approach to assure that public safety agencies catch up to and keep pace with the constantly changing innovations

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<sup>10/</sup> See *e.g.*, Section 3002(a)(2) (listing exemptions from competitive bidding authority for public safety radio services and defining such services as including certain private and not-for-profit organizations).

<sup>11/</sup> Any standard dictionary definition of "authorized" includes the types of agreements that Compu-DAWN enters into with public safety agencies whereby Compu-DAWN is commissioned to provide services to the agency. See *Webster's New World Dictionary of the American Language*, Second Edition (1992) (defining "authorize" as "1. to give official approval to or permission for, 2. to give power or authority to; empower; commission, 3. to give justification for; warrant").

<sup>12/</sup> In the present Rules Proceeding, NPSTC and APCO again urge the Commission to adopt a more restrictive definition of public safety services for purposes of eligibility to hold licenses in the 746-806 MHz public safety spectrum. The Commission, however, has explicitly rejected any efforts to adopt different definitions than those provided by Congress in the Budget Act. See Second Notice, at ¶ 74-76. Absent further direction from Congress, the explicit statutory definition of public safety services is the only definition relevant to this proceeding.

pervading telecommunications. The Commission recently recognized that interoperability problems "must be solved quickly if the public safety community is to meet the changing demands of the 21st century."<sup>13/</sup> By allowing certain nongovernmental entities endeavoring to serve public safety agencies to apply for public safety spectrum, the Commission would encourage commercial entities to develop affordable technologies tailored to public safety usage.<sup>14/</sup> These technologies have the potential to satisfy the public safety community's urgent and expanding interoperability requirements by providing a communications link between public safety officials in different jurisdictions, different levels of jurisdiction and different agencies. This nationwide link is essential to enable the public safety community to fulfill its mission of protecting the public in this century and beyond.<sup>15/</sup>

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<sup>13/</sup> See Second Notice, at ¶ 3.

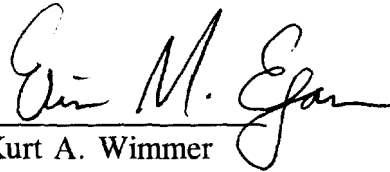
<sup>14/</sup> The Commission currently assigns free spectrum to commercial entities, including private organizations that provide ambulatory services. Compu-DAWN -- whose services more directly support the police, fire and other emergency response agencies -- similarly should receive spectrum to provide its public safety services.

<sup>15/</sup> See Second Notice, at ¶¶ 12-14 (emphasizing "critical need" for nationwide communications interoperability among Federal, State and local public safety agencies).

For all of the above reasons, the Commission should classify Compu-DAWN as a public safety provider and include Compu-DAWN as a candidate for the public safety spectrum.

Respectfully submitted,

COMPU-DAWN, INC.

A handwritten signature in cursive script, appearing to read "Erin M. Egan", is written over a horizontal line.

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